

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

Writ Petition No. 2866 of 2006

Mr.Jatindar Singh Choudhary ..Petitioner

vs.

1. Mr.Parshuram Sukhram Pawar
and others ..Respondents

Shri S.M.Oak for petitioner

CORAM: S.B.MHASE J.
27th April, 2006

P.C.

1. Heard the learned counsel for the petitioner.

2. Perused the judgments of the Cooperative Court and Cooperative Appellate Court. The plot upon which the tenements have been constructed was belonging to respondent no.2 society and respondent no.2 society has given the said plot for development to respondent no.3. After the tenements were constructed those tenements were to be given to the members of the said society. Respondent no.1 was one of the members of the said society and disputed tenement has been allotted by the said society to respondent no.1. However, respondent no.3 developer has transferred the said tenement in favour of the petitioner even though the petitioner was not the member of the said society. The learned counsel relied upon the letter dated 31st October, 1995 issued by the said society in favour of respondent no.3 whereby it is clarified by the said society that in case any member

desires to resign and surrender the right of his flat, respondent no.3 has been authorised to substitute the said member by enrolling other member of the choice of respondent no.3. However, outgoings of the member shall be paid with interest at the rate of 9%. Thus, the learned Counsel states that in view of this respondent no.3 was made the ostensible owner of those premises and, therefore, he was entitled to dispose of the property in favour of the petitioner. It is interesting to note that whether to enrol the person or not to enrol a person is a power of the Managing Committee of the society under sec.22 read with Rule 19 of the Maharashtra Cooperative Societies Act, 1960 and such power cannot be delegated by the society to any one. Apart from that if any person is the member of the said society and if he desires to resign from membership whether to accept the resignation or not is also the power of the Managing Committee and the said power cannot be delegated to any one and much more to a developer like respondent no.3. The management of the society in view of 73 vests in the Managing Committee and even though the General Body of the society is supreme body the supreme body cannot pass any resolution contrary to sec.73 and vests the management of the said society otherwise than the Managing Committee of the said society. Therefore, Resolution of the General Body upon which the petitioner is trying to rely upon is absolutely bad resolution in view of the provisions of the Maharashtra Cooperative Societies Act, 1960 and the said aspect has

been rightly analysed by the courts below. Apart from that even assuming that the said power was given to respondent no.3, it was obligatory for respondent no. 3 to demonstrate that respondent no.1 to whom the said tenement has been allotted by respondent no.2 society has resigned at any point of time so that respondent no.3 can transfer the said tenement in favour of the petitioner. There is absolutely no evidence on record that respondent no.1 had at any point of time resigned from the membership of respondent no.2 society and thereby the power to introduce the petitioner as a member can be exercised by respondent no.3 as per the said Resolution and letter dated 31st October, 1995. In sort the so-called delegated power has been misused by respondent no.3. No doubt all the terminal benefits of the petitioner have been invested by him while purchasing the said tenement but, however, that is a fraud committed by respondent no.3 as against the petitioner, for which the society is not responsible. This aspect has been properly analysed by the Courts below. No interference is called for. Petition is hereby rejected.

3. Learned counsel for the petitioner, at this stage, requests to grant some time to the petitioner to vacate the said tenement and he repeatedly stated that one year's time may be granted. However, since the respondents are not before this Court, this Court is inclined to grant time of 3 months to vacate the premises subject to

following conditions:

(i) That the petitioner files an undertaking before the Registrar (Judicial) of this Court that at the end of three months period the premises/tenement will be surrendered to respondent no.1 peacefully and without any obstruction;

(ii) That during the period of 3 months, the petitioner shall not create any third party interest in the said premises and;

(iii) The premises will be maintained without any damage and will be surrendered without causing any damage to the property

(S.B.MHASE J.)